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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/143,583	08/31/98	BOWERS	C 30-2138CIP2

IM62/0926
HONEYWELL INTERNATIONAL INC.
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EXAMINER

YAO, S

ART UNIT	PAPER NUMBER
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1733

DATE MAILED:

10
09/26/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademark

Office Action Summary

Application No.
09/143,583

Applicant(s)

Bowers

Examiner

Sam Chuan Yao

Group Art Unit
1733

☒ Responsive to communication(s) filed on Aug 22, 1900

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-13 is/are pending in the application.

Of the above, claim(s) 4-13 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-3 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

1. Applicant's election with traverse of Group I Species IA in Paper No. 8 is acknowledged. In view of Applicant's argument, a new reason for restricting the method and article claims is presented. In the instant case, the product as claimed can be made by another and materially different process such as uniformly blending binder fibers into a bundle of fibers before performing the step of ring/wrap spinning and then heat-melting the binder fiber.

Because a new reason is presented, the restriction requirement is therefore NOT made final.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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3. Claims 1-3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16, 18 and 21 of copending Application No. 08/933,822 for reasons of record set forth in Paper No. 6 numbered section 7.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lofquist (US 5,478,624) for reasons of record set forth in Paper No. 6 numbered section 9.

Response to Arguments

6. Applicant's arguments filed 08-22-00 have been fully considered but they are not persuasive.

Applicant argues on page 2 that "*The ring spinning or wrap spinning places a heat-activated binder fibers uniformly and continuously around the base fibers during twist insertion or wrapping to form the spun yarn.*" (emphasis added). In response, it is submitted that Applicant's argument is NOT commensurate with scope of the recited claims. There is nothing in

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the recited claims which require placing heat-activated binder fibers uniformly and continuously around the base fibers.

Applicant also argues on page 2 that Lofquist teaches intermittently commingling at discontinuous points binder fibers along the length of base fibers, therefore precludes the binder fibers from being placed uniformly and continuously around the base fibers. In response, it would appear that Applicant is mischaracterizing the Lofquist patent. Lofquist does not appear to teach intermittently commingling at discontinuous points binder fibers along the length of base fibers. It is suggested for Applicant to cite passage or passages to support Applicant's assertion. Equally important, it is quite clear from the teachings of Lofquist that the commingling process disclosed in column 3 lines 40-59 is a preferred embodiment, but not a necessary process as evidence from the following passage in column 3 lines 37-39: "*The binder fiber can also be continuous filament and blended with bulk continuous filament base fiber (BSF) via conventional means such as commingling*" (emphasis added). One in the art reading this passage would have readily recognized and appreciated that an effective alternative method to the commingling process in blending binder fibers around and along the length of BSF would either be a ring/wrap spinning method as such is a conventional yarn making method in the art.

As for Applicant's argument regarding the unexpected result, it is suggested for Applicant to provide experimental data comparing the resultant yarn properties using the recited method and the method suggested by Lofquist (i.e. commingling process disclosed in column 3 lines 40-59).

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As for Applicant's argument on page 3, Examiner agrees with Applicant that Lofquist does not expressly disclose using either ring or wrap spinning technique. That's precisely the reason why the claims are rejected under 35 USC 103 instead of 102. As pointed out by Examiner and correctly acknowledge by applicant, ring/wrap spinning techniques are known/conventional in the yarn making art. For this reason, absent any showing of unexpected benefit, one in the art would have chosen one of the well known effective techniques such as the ring/wrap spinning methods to form the yarns of Lofquist. None but the expected result would have been provided or achieved. Palmer (US 4,807,430; col. 1 lines 13-25; col. 3 lines 53-62) or Stahlecker et al (US 4,495,758; abstract; col. 1 line 5 to col. 2 line 15) is cited as evidence showing that it is known in the art to form a binder fiber blended yarn using a wrap spinning technique.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37


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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Sam Chuan Yao** whose telephone number is (703) 308-4788. The examiner can normally be reached on Monday-Thursday from 8:00 AM-5:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Mike Ball, can be reached on (703) 308-2058. The fax number in Group Art Unit 1733 for any official papers (i.e. papers that will be entered as part of the file wrapper) is (703) 305-7718 and for unofficial papers (e.g. proposed amendments) is (703) 305-7115.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.


Sam Chuan Yao
Primary Examiner
Art Unit 1733

scy
September 22, 2000